

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION**

In re:	§	
	§	Chapter 11
	§	
TAJAY RESTAURANTS, INC., <i>et al.</i>	§	Case No. 19-70067-TMD
Debtors. <sup>1</sup>	§	(Jointly Administered)
	§	

**DEBTORS' RESPONSE TO MOTION OF REAL ESTATE ACQUISITIONS KJE, LLC  
FOR AN ORDER PURSUANT TO 11 U.S.C. §105, 365 AND 503 (I) ALLOWING  
ADMINISTRATIVE EXPENSE, (II) DIRECTING PAYMENT OF POST-PETITION  
RENT OR REJECTION OF LEASE, AND (III) GRANTING RELATED RELIEF**

TO THE HONORABLE TONY M. DAVIS, U.S. BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”) hereby file this Response to Motion of Real Estate Acquisitions KJE, LLC for an Order Pursuant to 11 U.S.C. §105, 365 and 503 (I) Allowing Administrative Expense, (II) Directing Payment of Post-Petition Rent or Rejection of Lease and (III) Granting Related Relief (the “*Motion*”) and shows the Court as follows:

1. Paragraphs 1 - 3 concern the Movant’s statement of position. As set forth below, Debtors deny that the Movant is entitled to the relief requested. To the extent they constitute factual assertions, the assertions are denied.

2. Debtors admit the statements contained in paragraphs 4 - 6.

3. Debtors admit the statements contained in paragraph 7.

4. With respect to paragraph 8, the Debtors are unable to admit or deny the allegations contained in that paragraph.

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Yummy Seafoods, LLC (5494); Yummy Holdings, LLC (5580); and Tajay Restaurants, Inc. (3602). The mailing address for the Debtors, solely for purposes of notices and communications, is 3304 Essex Drive, Richardson, Texas 75082.

5. Debtors deny the allegations contained in paragraph 9.

6. Debtors deny the allegations contained in paragraph 10.

7. With respect to paragraph 11, Debtors admit that a check was mailed and the payment was made in mistake.

8. With respect to paragraph 12, Debtors admit that the equipment and signage has been removed, but otherwise deny the allegations in that paragraph.

9. Paragraph 13 constitutes legal argument. Debtors admit that the lease was listed on the schedules, but in fact, the lease was terminated pre-petition.

10. By letter dated May 3, 2019, Movant “terminated” the lease. Attached as Exhibit A is a true and correct copy of the correspondence sent by the Movant terminating the lease. Though Movant now seems to take the position that the lease was not terminated and is entitled to post-petition rent, the case law is clear that a landlord is not entitled to recover post-petition rent or an administrative expense for a lease that was terminated pre-petition. *See In re DBSI, Inc.*, 407 B.R. 159 (Bankr. D. Del. 2009); *see also In re Art & Architecture Books of the 21<sup>st</sup> Century* (2016WL1199116\*2) (Bankr. C.D. Cal. March 21, 2016).

11. Moreover, contrary to Movant’s assertions, the premises did not provide any benefit to the Estate on a post-petition basis, and Yummy Holdings was not in a “hold over”) position post-petition. For the reasons set forth above, Movant’s motion should be denied.

WHEREFORE, based on the foregoing, the Debtors request the Court deny the Motion and grant them such other and further relief to which they may be entitled.

DATED: September 6, 2019.  
Austin, Texas

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: /s/ Mark C. Taylor

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*Attorneys for the Debtors and  
Debtors in Possession*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on counsel listed below and on all persons on the attached service list either electronically via the Court's ECF service or by United States First Class Mail on September 6, 2019.

R.J. Shannon  
Barron & Newburger, P.C.  
7320 N. MoPac Expy., Suite 400  
Austin, Texas 78731

/s/ Mark C. Taylor

Mark C. Taylor

**MASTER SERVICE LIST**

**Debtors**

Tajay Restaurants, Inc., et al.  
3304 Essex Drive  
Richardson, TX 75082

**Counsel to Debtors**

Waller Lansden Dortch & Davis  
LLP  
Attn: Eric J. Taube/Mark C. Taylor  
100 Congress Ave., 18<sup>th</sup> Floor  
Austin, TX 78701

**Consolidated 20 Largest**

**Unsecured Creditors**

DTMJ-1, LLC  
Attn: David & Tara Montgomery  
5134 Wright Terrace  
Stokie, IL 60077

Janda Land Holdings, LLC  
c/o Charles Greenough  
McAfee & Taft  
Two W. Second Street, Suite 1100  
Tulsa, OK 74103

Long John Silver's Inc YRSG  
PO Box 950111  
Louisville, KY 40295

Comptroller of Public Accounts  
P O Box 149348  
Austin, TX 78714-9348

Dennis Semler Tulsa City Trs  
500 S. Denver Ave.  
3rd Floor  
Tulsa, OK 74103-3840

HBIC LLC  
1940 E. Walnut Street  
Pasadena, CA 91107

Oklahoma Tax Commission  
P O Box 26920  
Oklahoma City, OK 73126-0930

Lane Dworkin Properties, LLC  
415 Park Avenue  
Rochester, NY 14607

Economy Square Inc  
210 Park Ave, Suite 2175  
Oklahoma City, OK 73102

NADG NNN LJS-AW OK LP  
3131 McKinney Avenue  
Suite L-10  
Dallas, TX 75204

JLou Properties LLC  
1613 N. Broadway Ave  
Oklahoma City, OK 73103

J & C Property Co.  
13505 Montfort Place Suite# 200  
Dallas, TX 75240

McLane Food Service Inc  
2085 Midway Rd  
Carrollton, TX 75006-5063

Real Estate Acquisitions  
KJE LLC  
5822 Charlotte Dr. Unit 3403  
San Jose, CA 95123

Janda Land Holdings, LLC  
Attn: David L. Egelston  
101 E. Moon Valley Dr.  
Phoenix, AZ 84022

STE Ventures, LLC  
Attn: Steven T. Tsang  
20028 SE 3rd Circle  
Camas, WA 98607

August, August and Lane of  
Rochester LLC  
72 Canfield Rd.  
Pittsford, NY 14534

Burris Valley Ranch, Inc.  
c/o Joe C. Lewallen, Jr.  
McAfee & Taft  
211 North Robinson, 10th Floor  
Oklahoma City, OK 73102-7103

Burris Valley Ranch, Inc  
7300 N. Comanche  
Oklahoma City, OK 73132

AA&L II LLC  
72 Canfield Rd.  
Pittsford, NY 14534

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Clark Hill Strasburger  
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**Unsecured Creditors Committee**

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Attn: David Montgomery  
5134 Wright Terrace  
Skokie, IL 60077

Janda Land Holdings, LLC  
Attn: David Egelston  
101 E. Moon Valley Drive  
Phoenix, AZ 85022

Mittal & Sons, LLC  
Attn: Naveen Mittal  
123 Blue Hill Road  
San Antonio, TX 78229

J&C Property Co.  
Attn: Collin Berg  
13505 Montfort Place, Suite 200  
Dallas, TX 75240

**Parties of Interest and**

**Requesting Notice**

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Centralized Insolvency Operation  
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Philadelphia, PA 19101-7346

Office of the U.S. Trustee  
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c/o Bart A. Boren  
Williams, Boren & Associates, P.C.  
401 N. Hudson Ave., Suite 200  
Oklahoma City, OK 73102

## **EXHIBIT A**



## Notice of Service of Process

null / ALL  
Transmittal Number: 19770733  
Date Processed: 05/08/2019

Primary Contact: Omar Misleh  
Ampex Brands  
3304 Essex Dr  
Richardson, TX 75082-9708

Electronic copy provided to: Tabbassum Mumtaz

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Entity:	Yummy Holdings, LLC Entity ID Number 3187566
Entity Served:	Yummy Holdings, LLC
Title of Action:	Real Estate Acquisitions Kje, LLC. vs. Long John Silver's Store #5232
Document(s) Type:	Notice
Nature of Action:	Property
Case/Reference No:	Not Shown
Jurisdiction Served:	Kansas
Date Served on CSC:	05/06/2019
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Regular Mail
Sender Information:	Jeffreya. Chubb 620-331-1800

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

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Of Counsel

ROBERT K. SCOVEL  
Retired

MONTE K. HEASTY  
(1937 - 1997)

May 3, 2019

Yummy Holdings, LLC  
c/o Omar Misleh  
3304 Essex Dr.  
Richardson, TX 75082

Yummy Holdings, LLC  
c/o Omar Misleh  
7676 Hillmont, Ste. 199  
Houston, TX 77040

Yummy Holdings, LLC  
c/o Ajay Dhillon  
1024 Serpentine Ln, #101  
Pleasanton, CA 94566

Yummy Holdings, LLC  
17774 Preston Rd  
Dallas, TX 75262

Corporation Service Company  
Resident Agent for  
Yummy Holdings, LLC  
2900 SW Wanamaker Dr., Ste 204  
Topeka, KS 66614

**Re: Long John Silver's Store #5232**  
**314 West 11th Street**  
**Coffeyville, Kansas**  
**Franchisee: Yummy Holdings, LLC**  
**Notice of Termination of Lease**

Dear Ladies and/or Gentlemn:

I represent Real Estate Acquisitions KJE, LLC. This is a follow-up letter to my previous letter dated April 18, 2019, copy enclosed. At this time, Notice is hereby given that the Lease Agreement is hereby terminated and the Landlord will exercise all of its rights under the Lease Agreement. Please note that even though the Lease is being terminated, the Tenant has a continuing responsibility to make



Page Two  
May 3, 2019

lease payments as set forth in paragraph 11(b). Please govern yourselves accordingly.

I am required to advise you that this letter is an attempt to collect a debt.

Yours very truly,

EMERT CHUBB REYNOLDS, LLC

A handwritten signature in black ink, appearing to read 'J. Chubb', with a stylized flourish extending to the right.

Jeffrey A. Chubb

JAC:js

Enclosure

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April 18, 2019

**COPY**

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3304 Essex Dr.  
Richardson, TX 75082

Yummy Holdings, LLC  
c/o Omar Misleh  
7676 Hillmont, Ste. 199  
Houston, TX 77040

Yummy Holdings, LLC  
c/o Ajay Dhillon  
1024 Serpentine Ln, #101  
Pleasanton, CA 94566

Long John Silver's, Inc.  
Attn: Office of General Counsel  
1441 Gardiner Ln  
Louisville, KY 40213

Corporation Service Company  
Resident Agent for  
Yummy Holdings, LLC  
2900 SW Wanamaker Dr., Ste 204  
Topeka, KS 66614

Yummy Holdings, LLC  
17774 Preston Rd  
Dallas, TX 75262

**Re: Long John Silver's Store #5232**  
**314 West 11th Street**  
**Coffeyville, Kansas**  
**Franchisee: Yummy Holdings, LLC**  
**Delinquency in Rental Payment and Payment of Real Estate Taxes**

Dear Ladies and/or Gentlemen:

I represent Real Estate Acquisitions KJE, LLC, which owns the underlying real estate for the Long John Silver's location at 314 West 11th Street, Coffeyville, Kansas, and is the Landlord under the Lease dated June 18, 2008, which shows Yummy Holdings, LLC, as the Tenant. Please excuse the multiple letters to different addresses but the original 2008 Lease document contains some required

Page Two  
April 18, 2019

addresses for notification purposes, plus I have sent this letter to other addresses which I believe to be more current.

Please be advised that Yummy Holdings, LLC, has not paid rent for the months of January through April, 2019, inclusive, in the amount of \$5,148.58 per month. The total delinquency owed at this time is \$20,594.32.

In addition, paragraph 7 of the Lease requires Yummy Holdings, LLC, to keep the real estate taxes current. They are delinquent for the second half of the 2016 taxes, plus the second half of the 2018 taxes have not yet been paid. The total real estate tax delinquency as of April 17, 2019, is \$10,106.61.

Demand is hereby made that these delinquencies be brought current consistent with the terms of the Lease. Should you fail therein, my client will exercise its rights under the Lease and under the laws of the State of Kansas.

I am required to advise you that this letter is an attempt to collect a debt.

Yours very truly,

EMERT CHUBB REYNOLDS, LLC

A handwritten signature in black ink, appearing to read 'Jeffrey A. Chubb', is written over the printed name.

Jeffrey A. Chubb

JAC:js

**EMERT CHUBB REYNOLDS, LLC**  
ATTORNEYS AT LAW  
P. O. BOX 747  
INDEPENDENCE, KS 67301

FIRST-CLASS



PITNEY BOWES  
US POSTAGE  
\$ 000.50<sup>0</sup>  
02 1P  
0001192723 MAY 03 2019  
MAILED FROM ZIP CODE 67301

Corporation Service Company  
Resident Agent for  
Yummy Holdings, LLC  
2900 SW Wanamaker Dr., Ste 204  
Topeka, KS 66614

6661434186 C062

